

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

Peter Magnone,

Civil Action No.

Petitioner-Landlord,

NYCCC  
Index No. L&T  
07N092992

-against

Jandy Warner,

Respondent-Tenant.

-----X

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# NOTICE OF REMOVAL

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A. M. Bentley, P.C.  
SDNY Bar # AB1853  
116 West 72nd Street  
New York NY 10023  
(212) 459-4067

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**07 CIV 9603**

-----X

Peter Magnone,

Civil Action No.

Petitioner-Landlord,

NYCCC

Index No. L&T

07N092992

-against

**NOTICE OF  
REMOVAL**

Jandy Warner,

Respondent-Tenant.

OCT 29 2007  
U.S.D.C. S.D. N.Y.  
CASHIERS

-----X

To the Honourable Judges of the United States District Court for  
the Southern District of New York:

Removing party, Jandy Warner, by her undersigned attorney  
A. M. Bentley, P.C., respectfully shows to this Court:

1. Petitioner, through an attorney/debt collector, mailed respondent a validation notice of an alleged debt as that term is normally construed pursuant to Title 15 United States Code § 1692g(a) dated October 8, 2007 ("A").

2. Respondent, upon receipt thereof, immediately disputed the debt by faxed letter to petitioner's debt collector/attorney dated and transmitted to petitioner on October 15, 2007 ("B") which dispute was received electronically by petitioner's debt collector the same day ("C") and further mailed petitioner's debt collector the original of the dispute letter by priority mail posted (by me) on October 15, 2007 ("D") which letter was delivered to petitioner's debt collector on October 17, 2007 ("E").

3. Notwithstanding the foregoing, petitioner instituted a collection proceeding against respondent ("F") by petition authored, executed and verified not by petitioner, but by petitioner's debt collector/attorney, dated October 16, 2007, one day after the attorney/debt collector had received the dispute letter by fax, and one day prior to his receipt by priority mail of the original dispute letter, and, as is more germane here, prior to (and continuing bereft of) the attorney/debt collector's validation of the debt.

4. The collection proceeding ("F") above described is the proceeding herein captioned and noticed removed to this Court.

5. Neither petitioner, nor his debt collector/attorney, has answered respondent's dispute letter ("B"), nor has either forbore from collection activity against respondent ("F") since petitioner's receipt of such dispute.

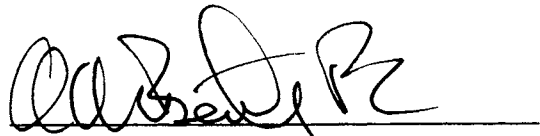
6. Petitioner is thereby in violation of the FDCPA. *Romero v. Heiberger & Assoc.*, 163 F.3d 111 (2d Cir. 1998).

7. Petitioner has therefore failed to fulfill one or more necessary conditions precedent precatory to instituting a summary proceeding to oust under New York law and the Civil Court of the City of New York is without jurisdiction to entertain the proceeding herein removed.

8. Exhibits "A" and "F" hereto contain all process, pleadings and orders received by respondent as are contemplated by Title 28 United States Code 1446(a).

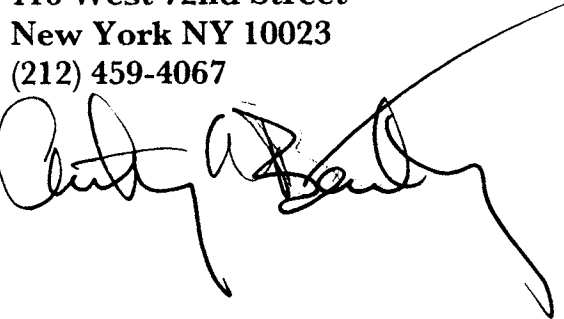
9. The grounds for removal are that the maintenance of the proceeding noticed removed herein under the circumstances above-described is violative of federal statutory law.

Dated:  
New York, NY  
October 29, 2007



---

A. M. Bentley, P.C.  
SDNY Bar # AB1853  
116 West 72nd Street  
New York NY 10023  
(212) 459-4067



**A**

**GREEN & COHEN, P.C.**

ATTORNEYS AND COUNSELLORS AT LAW  
319 East 91st Street, Professional Suite  
NEW YORK, NY 10128  
Telephone (212) 831-4400  
Fax No. (212) 831-8390

To: JANDY WARNER

Date: October 8, 2007

This firm has been retained to collect a debt for rent arrears totaling \$14,625.00  
Any information obtained will be used for that purpose.

The below named creditor claims that you owe rent arrears as specified. You have 30 days from receipt of this notice to dispute the debt in writing. If you fail to do so, we will assume the debt to be valid. If you timely notify us, in writing, that you do dispute the debt, we will obtain verification of the debt and mail same to you. Upon your written request made within thirty (30) days of the receipt of this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

This opportunity to dispute the debt is separate from any response that you are required to make or any action you are required to take with respect to any other legal notices you receive. Please respond to any legal notices you may receive within the time frames set forth in those notices.

Creditor: PETER MAGNONE

JANDY WARNER  
312 WEST 88TH STREET, APT: 5F  
NEW YORK, NY 10024

MAGNON-312-5F

---


TO: JANDY WARNER  
312 WEST 88TH STREET, APT: 5F  
NEW YORK, NY 10024

PLEASE TAKE NOTICE, that you are hereby required to pay your landlord, PETER MAGNONE on or before October 15, 2007, the sum of \$14,625.00 for rent described in Schedule "A", below, for the premises known as Apt # 5F, and located at 312 West 88th Street, New York, NY 10024, now occupied by you as tenant, or in the alternative, deliver possession of said premises to the undersigned. If you fail to pay or to give up possession of the premises the landlord will commence summary proceedings against you to recover possession of the premises.

Dated: New York, New York

October 8, 2007

PETER MAGNONE  
(Owner and Landlord)

  
PETER MAGNONE  
VIFAST REALTY

SCHEDULE "A"

Base Rent

OCT07 \$1,625.00  
SEP07 \$1,625.00  
AUG07 \$1,625.00  
JUL07 \$1,625.00  
JUN07 \$1,625.00  
MAY07 \$1,625.00  
APR07 \$1,625.00  
MAR07 \$1,625.00  
FEB07 \$1,625.00

MAGNON-312-5F

**B**



To →

**GREEN & COHEN, P.C.**  
ATTORNEYS AND COUNSELLORS AT LAW  
319 East 91st Street, Professional Suite  
NEW YORK, NY 10128  
Telephone (212) 831-4400  
Fax No. (212) 831-8390

To: JANDY WARNER

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This opportunity to dispute the debt is separate from any response that you are required to make or any action you are required to take with respect to any other legal notices you receive. Please respond to any legal notices you may receive within the time frames set forth in those notices.

Creditor: PETER MAGNONE

 **COPY**

JANDY WARNER  
312 WEST 88TH STREET, APT: 5F  
NEW YORK, NY 10024

MAONON-312-5F

From →

WARNER RECEIVED THIS NOTICE ON 10/13/07  
I DISPUTE THE VALIDITY OF THE DEBT OR  
A PORTION THEREOF. OBTAIN VERIFICA-  
TION OF THE DEBT AND MAIL ME SAME.  
PROVIDE NAME AND ADDRESS OF ORIGI-  
NAL CREDITOR. THANKS, A. BENTLEY.  
RETAINED COUNSEL TO ALLEGED DEBTOR  
DATE 10/13/07 INITIALS *AB*

ANTHONY M. BENTLEY  
116 WEST 72ND STREET  
NEW YORK NY 10023-3315  
COUNSEL TO WARNER

C

Internal Modern Edit Fax Jobs Window Help

AM8

admissions Anthony Bentley 19 08 23 -0400 Mon Oct 15 07

Results Q admissions

JANDY WARNER  
312 WEST 88TH STREET, APT. 5F  
NEW YORK, NY 10024

Internal Modern

Stop Jobs Supply Levels

Active Completed




Name	Size Number	State	Time
2007.10.15.19.04.51	1212 831-8390	Finished	10/15/07 7:07 PM
Claim faxed	1 800 858-5971	Finished	10/14/07 11:10 AM
2007.09.06.05.30.37	1 212 780-8064	Finished	9/6/07 5:35 AM
2007.09.05.23.03.40	1312 988-5528	Finished	9/5/07 11:05 PM
DPS Complaint Form(2)	1 518 472-8502	Finished	8/30/07 3:34 PM
Microsoft Word - N...	1 516 739-2010	Cancelled	8/29/07 2:12 AM
2007.08.23.21.37.42	1518 472-8502	Cancelled	8/29/07 2:03 AM
Microsoft Word - re...	1 617 565-7894	Cancelled	8/29/07 2:03 AM
2007.08.21.13.32.01	12128772868	Finished	8/21/07 1:44 PM

MAONON-312 -5F

*WARNER* PRECEDED THIS NOTICE ON 10/15/07  
I DISPUTE THE VALIDITY OF THE DEBT OR  
A PORTION THEREOF. OBTAIN VERIFICA-  
TION OF THE DEBT AND MAIL ME SAME.  
PROVIDE NAME AND ADDRESS OF ORIGI-  
NAL CREDITOR. THANKS. A. BENTLEY.  
RETAINED COUNSEL TO ALLEGED DEBTOR  
DATE 10/15/07 INITIALS *AB*

ANTHONY M. BENTLEY  
116 WEST 72ND STREET  
NEW YORK NY 10023-3315  
COUNSEL TO WARNER

**D**

 <b>UNITED STATES POSTAL SERVICE®</b>		<b>Click-N-Ship®</b>	
<b>P</b>		<small>www.usps.com 2103 8555 7490 3971 8939 0063 5000 0511 0128</small> <b>US POSTAGE</b> Flat Rate Env Signature Confirmation 10/15/07 0 lb 5 oz Mailed from 10023 071V00586913	
<b>USPS PRIORITY MAIL®</b>			
ANTHONY M BENTLEY A. M. BENTLEY, P.C. 116 W 72ND ST APT 4B NEW YORK NY 10023-3323			
SHIP JASON M. GREEN, ESQ. TO: GREEN & COHEN, P.C. PROF SUITE 319 E 91ST ST NEW YORK NY 10128-5348 			
<b>ZIP - e/ USPS SIGNATURE CONFIRMATION™</b>			
			
<b>420 10128 9121 0385 5574 9039 7189 39</b>			
Electronic Rate Approved #038555749			



Cut on dotted line.

### Instructions

- Each Click-N-Ship® label is unique. Labels are to be used as printed and used only once. DO NOT PHOTO COPY OR ALTER LABEL.
- Place your label so it does not wrap around the edge of the package.
- Adhere your label to the package. A self-adhesive label is recommended. If tape or glue is used, DO NOT TAPE OVER BARCODE. Be sure all edges are secure.
- To mail your package with PC Postage®, you may schedule a Carrier pickup online, hand to your letter carrier, take to a Post Office™, or drop in a USPS collection box.
- Mail your package on the "Ship Date" you selected when creating this label.

### Online Label Record (Label 1 of 1)

Signature Confirmation™ Number:  
**2103 8555 7490 3971 8939**

Paid Online		
Transaction #:	100250191	Priority Mail® Postage: <b>\$4.60</b>
Print Date:	10/15/2007	Signature Confirmation: <b>\$1.75</b>
Ship Date:	10/15/2007	(Electronic Rate)
Weight:	0 lb 5 oz	<b>Total: \$6.35</b>

From: ANTHONY M BENTLEY  
 A. M. BENTLEY, P.C.  
 116 W 72ND ST APT 4B  
 NEW YORK NY 10023-3323

To: JASON M. GREEN, ESQ.  
 GREEN & COHEN, P.C.  
 PROF SUITE  
 319 E 91ST ST  
 NEW YORK NY 10128-5348

\* Regular Priority Mail rates apply. Signature Confirmation service electronic fee required. Delivery information is not available by phone for the electronic rate. Refunds for unused postage paid labels can be requested online 10 days from the print date. A copy of the recipient's signature will be faxed or mailed upon request by visiting the web site listed below or calling 1-800-222-1811.



Thank you for shipping with the United States Postal Service!  
 Check the status of your shipment on the Track & Confirm page at [www.usps.com](http://www.usps.com)

**E**



[Home](#) | [Help](#) | [Sign In](#)

[Track & Confirm](#)

[FAQs](#)

## Track & Confirm

### Search Results

Label/Receipt Number: 2103 8555 7490 3971 8939

Detailed Results:

- Delivered, October 17, 2007, 12:08 pm, NEW YORK, NY 10128
- Electronic Shipping Info Received, October 16, 2007

[< Back](#)

[Return to USPS.com Home >](#)

### Track & Confirm

Enter Label/Receipt Number.

Jandy FDCPA Dispute I

[Go >](#)

### Notification Options

#### Track & Confirm by email

Get current event information or updates for your item sent to you or others by email.

[Go >](#)

#### Proof of Delivery

Verify who signed for your item by email, fax, or mail.

[Go >](#)

[Site Map](#)

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[Jobs](#)

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[National & Premier Accounts](#)

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No FEAR Act EEO Data

FOIA



United States Postal Service  
Customer Service



United States Postal Service  
Customer Service

**F**



ct 27 07 08:45p

Jandy Warner

(212) 724-3977

p. 1

CIVIL COURT OF CITY OF NEW YORK COUNTY OF NEW YORK HOUSING PART PETER MAGNONE		Index No. LT
Petitioner(s) JANDY WARNER	Respondent(s) JANDY WARNER	IMPORTANT TO TENANT-If you are dependent upon a person in the military service of the United States or the State of New York, advise the Clerk immediately, in order to protect your rights.
Address 312 WEST 88TH STREET APT. 5F NEW YORK, NY 10024	Address 312 WEST 88TH STREET NEW YORK, NY 10024	NOTICE OF PETITION Non-Payment DWELLING
First Name of Tenant and/or Undertenant being facilities and unknown to petitioner. Person intended being in possession of the premises herein described.		
To the respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof. PLEASE TAKE NOTICE that the annexed petition of PETER MAGNONE verified October 16, 2007 prays for final judgment of eviction, awarding to the petitioner possession of the premises described as follows: All Rooms, Apartment 5F located at 312 West 88th Street, New York, NY 10024, County of New York, in the City of New York as demanded in the petition.		
TAKE NOTICE also that demand is made in the petition for judgment against you for the sum of \$14,750.00 plus the costs and disbursements of the proceeding. TAKE NOTICE also that WITHIN FIVE DAYS after service of this Notice of Petition upon you, you must answer, either orally before the Clerk of this Court at 111 Centre Street, New York, NY 10013, County of New York, City and State of New York, or in writing by serving a copy thereof upon the attorneys for the petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the petitioner unless such defense or counterclaim is precluded by law or prior agreement of the parties. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than 3 nor more than 8 days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for FIVE days from the date of such judgment.		
TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action. In the event you fail to answer and appear, final judgment by default will be entered against you but a warrant dispossessing you will not be issued until the tenth day following the date of the service of this Notice of Petition upon you. TAKE NOTICE that under Section 745 of the Real Property Actions and Proceedings Law, you may be required by the Court to make a rent deposit, or a rent payment to the petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination has not been made by the court within 30 days of the first court appearance. Failure to comply with an initial rent deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on issues raised in your answer.		
Dated: October 16, 2007 JACK BAER Chief Clerk of the Civil Court of the City of New York		Attorney for Petitioner(s) GREEN & COHEN, P.C. 319 East 91st Street Professional Suite New York, NY 10128 212-831-4400

092997  
 INDEX NO. 07-10-2007  
 Civil Court of the City of New York  
 County of New York Housing Part  
 PETER MAGNONE

Petitioner(s)  
 Landlord(s)

against  
 JANDY WARNER

Tenant(s)

Address  
 312 WEST 88TH STREET

APT. 5F

NEW YORK, NY 10024  
 Amount Claimed: \$14,750.00  
 DWELLING  
 MAGNON-312-5F

NOTICE OF  
 PETITION NON-PAYMENT

Civil Court of the City of New York  
County of NEW YORK Housing Part

PETER MAGNONE

Petitioner(s)  
Landlord(s)

LANDY WARNER  
against

Tenant(s)

312 WEST 88TH STREET

Undertenant(s)

Apt. 5F

NEW YORK, NY 10024

Amount Claimed: \$14,750.00

DWELLING

MAGNON-312-5F

PETITION NON-PAYMENT

Notice of Petition served on \_\_\_\_\_

Notice of Petition returned on \_\_\_\_\_

Notice of Petition issued on \_\_\_\_\_

Tenant appears on \_\_\_\_\_

but fails to answer.

Tenant answers on \_\_\_\_\_

Answer is \_\_\_\_\_

Set for Trial on \_\_\_\_\_

Landlord notified on \_\_\_\_\_

Sufficiency of answer referred

to court \_\_\_\_\_

Raises \_\_\_\_\_ issue

\_\_\_\_\_

Attorney for Petitioner

Judge

GREEN & COHEN, P.C.

319 East 91st Street

Professional Suite

New York, NY 10128

212/831-4400

1. Petitioner(s) is(are) the landlord(s) of the premises.

2. Respondent(s) LANDY WARNER.

is(are) tenant(s) in possession of said premises to WRITTEN lease agreement made heretofore wherein respondents promised to pay to landlord or landlord(s) predecessor as rent \$1,625.00 each month in advance on the 1ST day of each month.

3. Respondent(s) are now in possession of said premises.

4. The premises are the residence of the tenant(s) and the undertenant(s) herein.

5. The premises for which removal is sought for Dwelling purposes and are described as follows:

All Rooms, Apartment 5F in the building known as 312 West 88th Street, New York, NY 10024, situated within the territorial jurisdiction of the Civil Court of the City of New York, County of NEW YORK.

6. Pursuant to said agreement there was due from respondent tenant(s), the sum of \$14,750.00 in rent and additional rent as follows:

Oct 07	Legal Fees	\$125.00	Oct 07	\$1,625.00	Feb 07	\$1,625.00
Sep 07	\$	1,625.00				
Aug 07	\$	1,625.00				
Jul 07	\$	1,625.00				
Jun 07	\$	1,625.00				
May 07	\$	1,625.00				
Apr 07	\$	1,625.00				
Mar 07	\$	1,625.00				

7. The premises are subject to the Rent Stabilization Law of 1969 as amended and have been duly registered with the New York State Division of Housing and Community Renewal and the rents said for herein do not exceed the lawful rent for the premises.

8. Said rent has been demanded from the tenant since same became due by FIVE day written notice, a copy of which, with proof of service is annexed.

9. Respondent(s) have defaulted in the payments thereof and continue in possession of premises without permission after said default. The premises are a multiple dwelling and pursuant to the Housing Maintenance Code Article 41 there is a currently effective registration statement on file with the Office of Code Enforcement which designates the managing agent named below, a natural person over 21 years of age, to be in control of and responsible for the maintenance and operation of the dwelling.

Agent PETER MAGNONE

Multiple Dwelling No.

122 WEST 81ST STREET, BSM, NEW YORK, NY 10024

136782

WHEREFORE Petitioner requests a final judgment against respondent(s) for the rent demanded therein, awarding possession of the premises to petitioner landlord, and directing the issuance of a warrant to remove respondent(s) from possession of the premises together with costs and disbursements of this proceeding. Dated: October 16, 2007

PETER MAGNONE

STATE OF NEW YORK COUNTY OF NEW YORK The undersigned affirms under penalty of perjury that he is one of the attorneys for the petitioner, that he has read the foregoing petition and knows the contents thereof, that the same are true to his own knowledge except as to matters stated to be upon information and belief, and as to those matters he believes them to be true. The signed of this belief as to matters not stated upon his knowledge are statements and/or records provided by the petitioner, its agents and/or employees and contained in the file in the attorney's office. This verification is made pursuant to the provisions of R.P.A.P. 741.

October 16, 2007

Jason Green / Michael Cohen

Oct 27 07 08:45p Andy Warner

(212) 724-3977

P. 2

Oct 27 07 08:46p

Jandy Warner

(212) 724-3977

P. 4

**GREEN & COHEN, P.C.**  
ATTORNEYS AND COUNSELORS AT LAW  
319 East 91st Street, Professional Suite  
NEW YORK, NY 10128  
Telephone (212) 831-4400  
Fax No. (212) 831-8390

To: JANDY WARNER

Date: October 8, 2007

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Creditor: PETER MAGNONE

JANDY WARNER  
312 WEST 88TH STREET, APT: 5F  
NEW YORK, NY 10024

MAGNON-312-5F

---

Oct 27 07 08:45p

Jandy Warner

(212) 724-3977

p.3

TO: JANDY WARNER

312 WEST 88TH STREET, APT: 5F  
NEW YORK, NY 10024

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Dated: New York, New York

October 8, 2007

PETER MAGNONE  
(Owner and Landlord)

  
PETER MAGNONE  
VIFAST REALTY

SCHEDULE "A"

Base Rent

OCT07 \$1,625.00  
SEP07 \$1,625.00  
AUG07 \$1,625.00  
JUL07 \$1,625.00  
JUN07 \$1,625.00  
MAY07 \$1,625.00  
APR07 \$1,625.00  
MAR07 \$1,625.00  
FEB07 \$1,625.00

MAGNON-312-5F

Oct 27 07 08:46p

Jandy Warner

(212) 724-3977

p.5

AFFIDAVIT OF CONSPICUOUS SERVICE

State of New York }  
County of Nassau }

Client Ref. #: MAGNON-312-5F

I, Ragonat Khan, being duly sworn, depose and say: That deponent is not a party to this proceeding, is a licensed Process Server over 18 years of age and resides at Queens, New York.

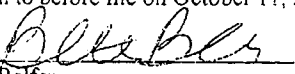
Deponent was unable to serve: JANDY WARNER tenant(s)/occupant(s) therein named by delivering a true copy thereof to said tenant(s)/occupant(s) personally at:

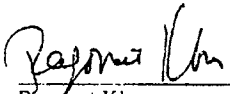
312 WEST 88<sup>TH</sup> STREET NEW YORK, NY 10024 APT: 5F on 10/11/07 at 10:48 AM.

Deponent affixed a true copy of the 5-Day Notice for each tenant/occupant upon a conspicuous part, to wit – the entrance door of said property.

Deponent was unable to find a person of suitable age and discretion willing to receive the same at this time or during a prior attempt made on 10/10/07 at 7:46 PM. Deponent served true copies of the above mentioned documents on each tenant/occupant at the property sought to be recovered, by depositing true copies of the same enclosed in a wrapper in the Post Office by Certified Mail and Regular First Class Mail within the State of New York on 10/11/07.

Sworn to before me on October 11, 2007

  
Beth Belfer  
Notary Public, State of New York  
No. 41-5000673  
Qualified in Nassau County  
Commission Expires August 17, 2010

  
Ragonat Khan  
License # 1184166